

Indiana Department of State Revenue
Revenue Ruling # 2005 – 04 ST
April 21, 2005

Notice: Under IC 4-22-7-7, this document is required to be published in the Indiana Register and is effective on its date of publication. It shall remain in effect until it is superceded or deleted by the publication of a new document in the Indiana Register. The publication of this document will provide the general public with information about the Department's official position concerning a specific issue.

Issues

1. Sales/Use Tax—Application of Sales/Use Tax to Tangible Personal Property Purchased for the Purpose of Leasing—Resale, Rental, and Leasing Exemption

Authority: IC 6-2.5-5-8

The taxpayer requests the Department to rule whether or not the taxpayer's purchase of an aircraft for the purpose of leasing is exempt from sales/use tax under I.C. 6-2.5-5-8, which exempts property acquired for resale, rental, or leasing in the course of one's business from sales/use tax.

2. Sales/Use Tax—Application of Sales/Use Tax to Use of Aircraft for Purpose of Providing Public Transportation—Public Transportation Exemption

Authority: IC 6-2.5-5-27, 45 IAC 2.2-5-61, 62, and 63

The taxpayer requests the Department to rule whether or not the taxpayer's use of an aircraft is exempt from sales/use tax under the public transportation exemption.

Statement of Facts

There are two separate taxpayers to consider. The first taxpayer is a LLC with a principal place of business in Kentucky. This taxpayer is qualified to do business in Indiana and has filed Indiana Online Form BT-1 (the Business Tax Application), which registers the taxpayer for the Indiana gross retail sales tax. The second taxpayer, the lessee, is an Indiana corporation with a principal place of business in Indiana.

The LLC executed a contract with an Indiana helicopter dealer to purchase a new helicopter. The dealer delivered the helicopter to the LLC in Indiana. The LLC registered the helicopter in Indiana. Immediately after registering the helicopter, the LLC leased the helicopter to the lessee. The lessee based the helicopter at lessee's principal place of business in Indiana.

The terms of the lease agreement provide that the lessee has authorization to use the helicopter for charters, air taxi services, aerial tours, external load work, aerial photography, sightseeing and flight instruction so long as the lessee receives compensation from third parties for providing the helicopter and a licensed pilot for such named activities. Under the terms of the lease, the lessee could also use the helicopter for personal and business use. However, the lease agreement provides that the lessee's personal and business use of the helicopter should not exceed more than 10% of the total use of the helicopter during the term of the lease. The total use is based on hours used.

It is mandatory that all uses of the helicopter by the lessee comply with the applicable provisions of the regulations of the Federal Aviation Administration at all times. Thus, the lessee has to comply with Parts 91 and/or 135 of the Federal Aviation Regulations (depending on the particular activity). In addition, it is mandatory that the lessee operate the helicopter pursuant to the authority issued under the regulations of the Federal Aviation Administration, which is a division of the U.S. Department of Transportation.

The lease agreement states that the amount of monthly rent owed is a function of the use of the helicopter. According to the agreement, the lessee owes \$300 per hour for the first thirty hours per month of use. Thereafter, the lessee owes \$275 per hour for all hours over thirty hours per month.

Under the terms of the agreement, the lessee holds itself out to the public as a provider of transportation services that are within the scope of the permissible uses stated under the lease agreement. It is the anticipation of the lessee that the primary use of the helicopter will be charters for the purposes of commercial photography, traffic watch and newsgathering by local news organizations, police patrol by local law enforcement, and power or pipeline patrol by local utility companies. The uses just mentioned involve the taking off of the helicopter, transporting of persons and property by air, and occasional landings at other locations. Despite occasional landings at other locations, the persons and property normally return to the location from which the charter began. Even though the lessee does anticipate some air taxi service (i.e., transporting persons and property from one location to another), it does not expect such service to be its primary use of the helicopter.

Issue #1—Discussion

The taxpayer requests the Department to rule whether or not the taxpayer's purchase of an aircraft for the purpose of leasing is exempt from sales/use tax under I.C. 6-2.5-5-8, which exempts property acquired for resale, rental, or leasing in the course of one's business from sales/use tax.

IC 6-2.5-5-8(b) states the following:

Transactions involving tangible personal property other than a new motor vehicle are exempt from the state gross retail tax if the person acquiring the property

acquires it for resale, rental, or leasing in the ordinary course of the person's business without changing the form of the property.

According to 45 IAC 2.2-5-15(c), which addresses the application of the general rule of IC 6-2.5-5-8, the sale of the tangible personal property must be to one who "intends" to resell, rent or lease the property. The regulation provides that the exemption is not applicable to purchasers who possess the intention to consume, use, or add value to the property through either the rendition of services or the performance of work with respect to such property. 45 IAC 2.2-5-15(c) further states there is a mandatory condition that the purchaser be occupationally engaged in reselling, renting or leasing the acquired tangible personal property in the regular course of its business. Lastly, 45 IAC 2.2-5-15(c) provides that it is compulsory that the property acquired be resold, rented or leased in the exact form that it was purchased.

Here, the taxpayer, the LLC, acquired the helicopter for the purpose of leasing it to a third party. Assuming the form of the property was not changed and the taxpayer leases the helicopters in the regular course of its business, the taxpayer's purchase of the helicopter falls within the ambit of the exemption statute stated above.

Issue #1 Ruling

The Department rules that the taxpayer's purchase of the helicopter for the purpose of leasing is exempt from sales/use tax under I.C. 6-2.5-5-8, which exempts property acquired for resale, rental, or leasing in the course of one's business, providing that such helicopter was purchased in the regular course of the taxpayer's business and the form of the helicopter was not altered.

Issue #2—Discussion

The taxpayer requests the Department to rule whether or not the taxpayer's use of an aircraft is exempt from sales/use tax under the public transportation exemption.

IC 6-2.5-5-27 states that:

Transactions involving tangible personal property and services are exempt from the state gross retail tax, if the person acquiring the property or service directly uses or consumes it in providing public transportation for persons or property.

45 IAC 2.2-5-61(b) defines "public transportation" to be the following:

Public transportation shall mean and include the movement, transportation, or carrying of persons and/or property for consideration by a common carrier, contract carrier, household goods carrier, carriers of exempt commodities, and other specialized carriers performing public transportation service for compensation by highway, rail, air, or water, which carriers operate under authority issued by, or are specifically exempt by statute or regulation from

economic regulation of, . . . the U.S. Department of Transportation; however, the fact that a company possesses a permit or authority...does not of itself mean that such a company is engaged in public transportation unless it is in fact engaged in the transportation of persons or property for consideration as defined above.

45 IAC 2.2-6-61(c) states further that only tangible personal property, which is reasonably necessary to the rendering of public transportation, qualifies for the public transportation exemption. To meet the “reasonably necessary” test it must be shown that the tangible personal property is both indispensable and essential in the direct transportation of persons or property. According to 45 IAC 2.2-6-61(d), the Indiana Department of Revenue has determined that vehicles that are used for public transportation are necessary to the rendering of public transportation.

Ultimately, taking the stated provisions into consideration, the taxpayer will qualify for the public transportation exemption if it, the taxpayer, shows that it is predominately engaged in public transportation and that the tangible personal property acquired is to be predominately used in providing public transportation. See Panhandle Eastern Pipeline, 741 N.E.2d 816. It is important to highlight that consideration must be given in order for the public transportation exemption to apply. See Grand Victoria Casino & Resort, L.P. v. Ind. Dep’t of State Revenue, 789 N.E.2d 1041. Also, in order to prove that the tangible personal property acquired is “predominately” used in providing public transportation, the taxpayer must show that the acquired tangible personal property is engaged in public transportation more than fifty percent of the time. If such can be shown, then the taxpayer qualifies for an exemption of the entire purchase price of the acquired tangible personal property.

Under the facts of the case presented, the terms of the lease agreement provide that the lessee is authorized to use the helicopter for “for hire” activities. The facts also state that the lessee operates under the authority of the Department of Transportation and that the lessee’s use of the helicopter for personal and business uses is restricted to no more than ten percent of the total use of the helicopter. Ultimately, to the extent that it can be shown that the “for hire” activities constitute “moving, transporting, or carrying persons and/or property for consideration,” the taxpayer will be entitled to the public transportation exemption. Further, the use of the helicopter for charters, air taxi services, aerial tours, external load work, aerial photography and sightseeing is considered to be use in public transportation. The use of the helicopter for flight instruction is not considered to be use in public transportation.

Issue #2 Ruling

The Department rules that the lessee’s use of the helicopter for providing public transportation is exempt from sales/use tax under the public transportation exemption so long as the lessee can prove that it meets the first-prong of the test, which is that the lessee is predominantly engaged in providing public transportation, and the second-prong of the test, which is that the lessee uses the helicopter predominately for providing public transportation. The Department, further, rules that the use of the helicopter for charters,

air taxi services, aerial tours, external load work, aerial photography and sightseeing is use in public transportation. The use of the helicopter for flight instruction is not use in public transportation.

Caveat

This ruling is issued to the taxpayer requesting it on the assumption that the taxpayer's acts and circumstances, as stated herein, are correct. If the facts and circumstances given are not correct, or if they change, then the taxpayer requesting this ruling may not rely on it. However, other taxpayers with substantially identical factual situations may rely on this ruling for informational purposes in preparing returns and making tax decisions. If a taxpayer relies on this ruling and the Department discovers, upon examination, that the fact situation of the taxpayer is different in any material respect from the facts and circumstances given in this ruling, then the ruling will not afford the taxpayer any protection. It should be noted that subsequent to the publication of this ruling, a change in a statute, a regulation, or case law could void the ruling. If this occurs, the ruling will not afford the taxpayer any protection.

Indiana Department of State Revenue